

From: John D. Mitchell
To: Microsoft ATR
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Subject: Microsoft Settlement

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John D. Mitchell
2129 Ascot Drive #7
Moraga, CA 94556
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Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NW
Suite 1200
Washington, DC 20530-0001
microsoft.atr@usdoj.gov

Subject: Microsoft Settlement

SUMMARY

The currently proposed settlement with Microsoft woefully fails to address the critically important need of restoring hope to all of the parties afflicted by the Microsoft's abuse of monopolistic power.

Restoring of hope is a critical criteria by which any and all proposed solutions to the Microsoft monopoly problem must be judged.

Moving forward, a just and fair solution to the Microsoft monopoly can only be created through a combination of structural and behavioral remedies.

AXIOMS

(Rule of) Law

At the surface, (the rule of) law is the complex, accretive, disjointly semi-hierarchical, codification of the conglomeration of (the processes of) (dealing with) (quasi-) behaviors.

At the heart, (the rule of) law is a simple belief system.

Fundamentally, (the rule of) law is about hope.

Anti-Trust Law

At the surface, anti-trust laws are primarily about dealing with things like the (private sector) abuse of monopoly power to harm consumers.

At the heart, anti-trust laws are about dealing with entities which unduly restrict free-market competition.

Fundamentally, anti-trust laws are about dealing with entities which eliminate hope.

MICROSOFT ANTI-TRUST CASE

Background

The facts are simple and clear:

- * Microsoft has systematically and aggressively pursued monopolistic goals since its formation.
- * Microsoft's behavioral outrageousness stems directly from the

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corporate, "Cult of Bill" culture (ala "Cult of Personality") that has been created and fostered by all of the senior management of the company including Bill Gates himself.

- * Microsoft has been very successful at gaining monopolistic power in many critical areas of the computer (software) business.

- * Microsoft has repeatedly, aggressively, and unapologetically abused its monopolistic power to the detriment of the marketplace.

- * Microsoft has clearly shown its obstinate incapability to adhere to behavioral restraints.

Lack of Hope

The settlement and (behavioral) remedies proposed by the US DoJ vs Microsoft anti-trust action are not only worthless to the marketplace but are outright detrimental. Why is that so clearly the case? Simple...

The proposed settlement does absolutely nothing to address the fundamental abuse of Microsoft: the severe curtailing and, often, outright elimination of hope. For example:

- * The hope of major (software) competitors has been mostly devastated over the years by e.g., Microsoft's abuse of its monopolistic power to exclude the competition from pre-built computers containing Microsoft operating systems (which increasingly forcing the "up selling", if not outright inclusion of more and more Microsoft products and services).

- * The hope of computer vendors to sell whatever (software) it is that they want and are able to with their computers to satisfy their customers.

- * The hope of upstart, would-be (software) competitors. It's a well known truism that a great many startup companies work so as to *not* attract the notice of Microsoft for as long as possible. It's incalculable how many companies (and projects within existing companies) have been canceled due to fear of Microsoft's (re)action.

- * The hope of consumers for a fair price based on a fair, open market.

- * The hope of (ignorant, inexperienced, etc.) consumers for computer systems that actually work (reliably, robustly, inexpensively, securely, etc.).

- * The hope of (informed, experienced) consumers for computers and software that can (reliably, effectively, inexpensively, securely, etc.) inter-operate between all consumers (that don't explicitly choose to isolate themselves) without being, a priori, forced into using Microsoft products (due to such forces as the so called "network externalities" effects which reinforce monopolistic power).

- * The hope of investors for a market which is unskewed by the insidious abuses of monopolistic power.

- * The hope of citizens that the rule of law (still) has meaning and that breaking the law has serious, effective, and efficient consequences upon the violators, inhibitive effects upon would be violators, and some restitution for the violated.

By neglecting dealing with hope, the proposed settlement precludes the reconstitution of a fair and open market, allows a vicious predator to

continue their predations, and weakens the rule of law.

Therefore, any proposed settlement remedies must be judged in their effectiveness and efficiency at restoring hope.

Side-note on Consumer Pricing

I have heard many arguments, both pro and con, from various people using ("guesstimates") of the effects of Microsoft's monopolistic abuses on the prices that consumers have paid for various products. I have found all of those such arguments that I have heard to be severely lacking directly in proportion to their failure to address the fundamental hopes and expectations of consumers.

For example, of what import is the fact that Microsoft may or may not have "over-charged" some customers for some of their products if there was no hope of having a fair and open market to determine the true pricing? The very fact that there was not (any hope of) a fair and open market meant that there was absolutely no possibility whatsoever that anyone could have paid a fair price for any product or service from Microsoft nor for any product or service impacted by the monopolistic effects of the so skewed marketplace.

Behavioral Remedies are Insufficient

Given the facts of the case, it is crystal clear that the current proposed settlement's reliance upon strictly behavioral remedies is insufficient to effectively and efficiently restore any hope.

My analogy is that of modifying the behavior of children... It is clear that while an appropriate corrective action (e.g., a slap on the wrist) by a reasonable, supervising guardian may well affect a change of behavior (for the better) in an otherwise normal, well-behaved child; such a remedy does, at best, nothing to positively change the behavior of a willfully recalcitrant teenager (and, at worst, merely incenses and incents them to be more clever in their abuses). At least, Microsoft must be treated as such a willful violator.

Many others have gone through and picked apart each and every one of the behavioral remedies in the proposed settlement. I won't go further into analyzing them here due to my contention that those remedies are, by themselves, so clearly insufficient. That said, I have co-signed Dan Kegels' open letter -- <http://www.kegel.com/remedy/letter.html>.

Structural Remedies are Necessary

Structural remedies are necessary to any proposed resolution to the Microsoft monopoly. Only by incontrovertibly dispersing and otherwise separating each of the major constituents can there be any hope of significantly and effectively modifying the behavior of Microsoft and its monopolistic effects.

Structural remedies are necessary so that each of the resulting entities can be effectively constrained from (attempting to) reconstitute the original company. In addition, the resulting entities must be sufficiently isolated in terms of its market power by having to stand and compete in a fair and open market without being able to rely on the direct and synergistic power effects that Microsoft currently abuses.

Structural and Behavioral Remedies are Necessary and Sufficient

I hope that it's clear from the preceding that the only ways to curtail the continued devastation of all of our collective hopes by Microsoft is to

imposed significant structural remedies along with broad behavioral remedies.

I will leave it to another missive to go into details and rationale of my proposed remedies but the broad strokes are:

- * Divest the current assets of Microsoft into three (4) new entities. One entity for creating operating systems for devices (PCs, handhelds, etc.). One entity for the end-user applications such as Microsoft Office suite of applications. One entity for the development tools and libraries. And finally, one for end-user services such as MSN. Appropriate, suitably related portions of each of the general facets such as customer service & support and Microsoft Research would be dispersed to each of the new entities.

- * Require that the (major) shareholders, the board members, and at least top three levels of executive management can only have anything whatsoever to do with at most one of the created entities. Also, inhibit their ability to switch between the created entities.

- * Enjoin the resulting entities from colluding with any of the entities on any products or services to the exclusion of any other companies in any respective market.

In conclusion:

- * The currently proposed settlement fails completely to provide any hope for anyone, except those who gain by Microsoft continuing to abuse its monopoly, that anything will change for the better.

- * Judging any proposed solution to Microsoft's monopoly must incorporate and account for the effects hope.

- * Based on my experience and analysis, the only possible solutions necessarily must be based a combination of both structural and behavioral remedies.

Sincerely,
John D. Mitchell
Moraga, CA
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